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Private Law: Particular Contracts

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ciently clear from the fact the seller sued her alone and did not join the husband in the suit; and if the wife's purchase was in her name, there was not proof in writing he had assumed her obligation. On the other hand, however, if it could be said she had acted under the presumed customary tacit mandate, then the husband would have been liable simply as the contracting party without need to resort to the erroneous notions of ratification by non-action or receipt of benefit, or of the wife's being able to obligate "the community."

PARTICULAR CONTRACTS

*J. Denson Smith**

In *Burke v. Besthoff Realty Co.*,¹ an attempt was made to recover *in solido* against the owner and the lessee of premises adjoining those of the plaintiff on the basis of article 667 of the Civil Code, which limits the privilege of a proprietor to do with his estate whatever he pleases by providing that he cannot make any work on it which may be the cause of any damage to his neighbor. On finding that the lessee was not chargeable with fault, the action against him was dismissed. There is some authority for the proposition that a long-term lessee may be treated as having a proprietary interest for the purpose of applying article 667.² There is also authority for the view that where the lessee, rather than the proprietor, is at fault, the latter is not liable.³ The instant case held the proprietor responsible on the basis of article 667, notwithstanding an absence of fault on his part. Assuming that the acts in question, the use of a large trash truck and its hydraulic equipment, come within the purview of the article, the holding seems sound.

In *LeBoeuf v. Malbrough*,⁴ the public records doctrine was held to protect a third person who purchased property subject to a right of redemption after the period of redemption had expired as against a claim that he knew the original vendor

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1. 196 So.2d 293 (La. App. 4th Cir. 1967).

2. *Fontenot v. Magnolia Petroleum Corp.*, 227 La. 866, 80 So.2d 845 (1955); *Devoke v. Yazoo & M. V. R.R.*, 211 La. 729, 30 So.2d 816 (1947); *McGee v. Yazoo & M. V. R.R.* 206 La. 121, 19 So.2d 21 (1944). See also Stone, *Tort Doctrine in Louisiana: Obligations of Neighborhood*, 40 TUL. L. REV. 701 (1966).

3. See *Muller v. Stone*, 27 La. Ann. 123 (1875); *Tunnage v. Eddy*, 42 So.2d 382 (Orl. App. 1949). Cf. Comment, *Strict Liability for Uses of Property Under the Louisiana Civil Code*, 20 LA. L. REV. 378 (1960).

4. 188 So.2d 196 (La. App. 1st Cir. 1966).

had verbally agreed to redeem the property. Since there was nothing of record to show that the right of redemption had been exercised, the protection of the third person was clearly consistent with the leading case of *McDuffie v. Walker*.⁵

A writ of review has been granted by the Supreme Court in the case of *Baton Rouge Wood Products, Inc. v. Ezell*,⁶ which involves the question of revival of a mortgage subsequent to the payment of the secured indebtedness.

The case of *Younger v. American Radiator & Standard San. Corp.*⁷ is being noted in this Review.

TORTS*

PRODUCTS LIABILITY

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Leah Guerry***

Four products liability cases decided by the appellate court in this last term deserve mention.¹ The *Deris* case arose when plaintiff chewed bits of glass in a banana split she was eating. The court predictably applied the Louisiana rules of warranty in holding the defendant liable.²

The remaining three cases, *Meche*, *Larance*, and *West*, were decided by the application of principles of tort law. Not one of the three cases brought forth any soul-searching on the problem of whether products liability cases properly are founded in tort or in warranty. It is not the purpose of this brief commentary to probe that problem to its depth, but rather here will be noted the current treatment being accorded products liability

5. 125 La. 152, 51 So. 100 (1910).

6. 194 So.2d 372 (1966).

7. 193 So.2d 798 (La. App. 3d Cir. 1967), *writ refused*.

* The Products liability section of Torts was written by Dean Crawford. The sections on Sheriff's Liability for Negligent Acts of His Deputy, Noncompensable Mental Pain and Anguish of Parents Resulting From Injuries to Their Child, and Duty to Warn Social Guest were written by Mrs. Guerry.

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1. *Meche v. Farmers Drier & Storage Co.*, 193 So.2d 807 (La. App. 3d Cir. 1967); *West v. Hydro-Test, Inc.*, 196 So.2d 598 (La. App. 1st Cir. 1967); *Deris v. Finest Foods, Inc.*, 193 So.2d 412 (La. App. 4th Cir. 1967); *Larance v. FMC Corporation*, 192 So.2d 628 (La. App. 2d Cir. 1966).

2. Comment, 22 La. L. Rev. 435 (1962).